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Doris Gordon,  
Libertarians for Life  
13424 Hathaway Drive  
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Dear Miss Gordon:

I have reviewed the material published by Libertarians for Life, including your brochure entitled, "A Wrong, Not a Right: An Atheist Libertarian Looks at Abortion," and the one entitled "Abortion and the Question of the Person," by John Walker. In light of these, I have reviewed the correspondence between you and William F. Buckley, Jr.

Before detailing points of contention, let me concur in Mr. Buckley's overall commendation of the LFL material. It is lucid and deserves to be persuasive. I particularly think that your use of premises drawn from the obligation of parents toward their dependent children, combined with the fact that the existence of such children is a consequence for which the parents are responsible, represents a fresh and important line of justification for the pro-life position. Perhaps you will allow me to illustrate.

It seems to me that your argument goes like this.

Premise (1): People are obligated to assure the well-being of the dependent children for whose existence they are responsible.

Premise (2): People are responsible for the consequences of their actions.

Premise (3): The existence of pre-born children is a consequence of the parents' actions.

Conclusion (1): Therefore, the parents are responsible for the existence of their pre-born children.

Premise (4): Pre-born children are dependent children.

Conclusion (2): Therefore, the parents are obligated to assure the well-being of their pre-born children.

The inference to both conclusions is valid, and under the contingency that the unborn child is "wanted," no one denies any of the premises. The campaign against maternal drinking is an accepted application of premise (1). The campaign against teen pregnancy relies upon premises (2) and (3). The hounding of missing males for paternity actions, child support, etc., draws its point from premise (4). So, in order to pretend

that the wantedness of the child matters -- so that conclusion (2) does not hold in case the pre-born child is unwanted -- the pro-abortionists must attach a proviso (e.g. "provided that the children are wanted") to one or another of these four premises. Which one shall they choose?

The proviso cannot be attached to premise (1) without giving parents permission to neglect or abuse children of any age, whom they cease to want. It is not germane to premise (2). It cannot be attached to premise (3) without yielding the absurdity that unwanted children come out of nowhere, like so-many uncaused entities; and that leaves premise (4). Let's see: pre-born children are dependent children, provided that they are wanted. This is very much what abortionists want to hold, and I think its silliness is unusually clear in the context which your argument creates. Harriet Pilpel, in the costume of Cinderella, wishes very hard that her fetus shall not depend upon her, in case she refuses to declare it a dependent; Mr. Justice Blackmun, as the fairie Godfather, makes her wish come true. The unwanted child becomes a non-dependent for purposes of the law, and poof!, Harriet's obligation vanishes.

Of course, pretending that unwanted children aren't dependents to whose welfare one is obligated to attend is a great deal easier, if one can persuade oneself that they aren't persons. The word 'dependent' is very firmly stuck to young *persons*, but it has no established use in connection with non-persons. The grass in the back yard is a non-person; you may predict with truth that it will perish unless you water it, but you are unlikely to call it a "dependent." In the absence of established usage, one may speak as one chooses. For example, if very young children are non-persons, one is free to apply 'dependent child' to them on the analogy of how one applies 'pet' to dogs. Notice that a *wanted* dog is a pet, and an owner is obligated to care for his pet (everyone seems to agree to this; on what ground I shall not inquire); but when a dog is *unwanted*, it ceases to hold the "pet" status; as mere property, no obligation-to-care attaches to it; subject to general conditions of "humane" disposal, it can be sold or put to sleep. In other words, it is *qua* pet that the dog poses a duty, and the pet status disattaches at will.

It is in this way, I think, that the issue of personhood affects the main line of your argument, as set forth above in the four premises. The abortionists deny personhood to the very young, precisely so that the key titles of 'child' and 'dependent' may disattach *ad libetum*.

Wisely, you attack this denial of personhood, and your attack brings us to the matter of the present correspondence.

Have you argued persuasively that the fetus is a person? Mr. Buckley demurs, and his hesitation seems to be prompted as follows. (1) He senses a lack of "proofs" on the

matter of "when human life must be said to begin."<sup>1</sup> (2) He identifies this matter with that of "who must be counted as a person."<sup>2</sup> (3) He thinks that certain assertions about a "power for reason and choice" are made to do duty for the missing proofs on both points, and so (4) he feels that a vicious circularity is threatened: "Your literature seems to say that it [the power for reason and choice] exists because the fetus is human, and then to say that the fetus is a (human) person because the power exists."<sup>3</sup>

The question submitted to me is this: Is Mr. Buckley's pause well taken?

I answer in the negative. The perceived threat of circularity arises by a mistake at step (2), where Mr. Buckley joins things which your publications put asunder.

Your brochures distinguish the question, "Is the early embryo a human?" -- the H-question -- from "Is the early embryo a person?" -- the P-question. Mr. Walker is explicit and correct that the H-question is a scientific one, a matter of primatology, whereas the P-question is philosophical in nature. In the Gordon brochure, the two questions are handled under separate sub-headings, with text pertinent to the H-question being biological in content, and the longer text pertinent to the P-question being philosophical.

In both publications, the H-question is settled by those biological indicators which are necessary and sufficient to mark "an individual of the species *homo sapiens*." These indicators, roughly and quickly stated, are (a) a living organism, (b) genotypically human, and (c) genetically distinct from the parents and gametes causally related to its existence. These indicators are found to be satisfied already upon completion of the fertilization process. As a result, it is correct to say that the new organism "is an individual of the species *homo sapiens*," when it is a fertilizatum, and at each of its subsequent stages of development -- when it is a zygote, when it implants, when it matriculates. It is true that you do not linger so lovingly over this material as some RTL publications do, and your brevity may be a source of Mr. Buckley's apprehension that proofs are missing. But proofs should hardly be necessary for points that can be found in a high school textbook. There are yahoo slogans used by the other side -- "It's just a blob," "It's just a part of the mother" -- which you could refute with textbook citations, but you are under no obligation to pitch your argument to the basement.

The P-question is a very different affair, as your published material indicates. It

<sup>1</sup> Letter of Dec. 5, 1989.

<sup>2</sup> Same letter, same sentence. The two matters are identified by apposition.

<sup>3</sup> Letter of Jan. 9, 1990.

is different because the term 'person' is not a biological description.<sup>4</sup> In settling whether an embryonic human should be called a person, there are two ways to proceed. One is to establish the standard use of the word in English, clarify the meaning behind that use, and see where the embryo stands vis-à-vis this clarified meaning. The other way is to prescribe what 'person' ought to mean, criticize any standard uses inconsistent with the prescription, and see where the embryo stands vis-à-vis the prescribed meaning. To your credit, you proceed in the first way. You consider the various theories of "what it is to be a person," and you reject those which are at odds with how we do in fact use the word. Specifically, you show that certain abortionist accounts of personhood have counter-intuitive consequences; they fly in the face of how we ordinarily use the word. You do not say so, but in arguing this way you are exposing the prescriptive character of the abortionist accounts.<sup>5</sup>

In clarifying the meaning behind the standard uses of 'person', you find that the sense of the word is something like 'agent capable of reason and choice' and that the reference of the word is (a) human individuals and (b) such other individuals as may be such agents (St. Michael the Archangel, for example, or E.T.). You observe this key fact about standard usage: that the reference of 'person' includes *the whole set* of human individuals; we do not standardly divide that set; we do not countenance a sub-set of humans who are non-persons. You explain this fact cogently: 'person' refers to any and all humans, because the capacity for reason and choice *is a species-wide characteristic of homo sapiens*.

This explanation fixes the sense of 'capacity' that is appropriate, when the specific case of the human embryo is addressed. The appropriate sense needs to be fixed, because many senses are available. There is a good sense of 'capacity', for example, in which sleepers lack the capacity for reason or choice. After all, the

<sup>4</sup> This fact is fortunate for Mr. Buckley's faith, and mine, since the three Persons of the Trinity and their innumerable angelic admirers fail to satisfy any biological description. Some people mistakenly conclude that 'person' is therefore a spiritual description of some sort, applicable to immaterial souls, Cartesian egos, or monads of consciousness. They err, and for their penance ought to read the reply to the fifth objection in article 1 of question 29 in the Prima Pars of the Summa Theologica of Aquinas. But as LFL does not err on this or any related point, let us make an end of this footnote.

<sup>5</sup> Prescriptive philosophizing is ultimately ideological. If standard uses of basic words are to be rejected, because they fail to fit the philosopher's revisionist definitions, what body of evidence does he leave, against which, in principle, we could criticize his definitions? If the answer is none, his thought becomes a closed, self-validating system, immune to shock from the reality outside it. Sir Karl Popper has benefited the human race very handsomely by his strictures against this sort of "unfalsifiability" in what pretends to be science. The strictures will tell equally, *mutatis paucis*, against what pretends to be philosophy.

sentence, 'You can't reason or make choices when you are asleep', is true, though it is very much regretted by persons as slothful as the present writer. But that sense of 'capacity' is inappropriate to the question at hand, because a sleeping human is considered a person, *even while asleep*. Likewise, a patient in a coma or one suffering from brain damage is still considered a person. Babies under two years of age, who cannot as yet reason or choose, because their brain myelinization is not complete, are nevertheless considered persons. Faced with this evidence, you conclude that the appropriate sense of 'capacity' is the radical one that is given with human nature itself.

In classical terms, 'nature' means a principle of operation. The "principle" of an operation is the faculty or capacity for that operation. Hence the "nature" of a species is a bundle of capacities -- capacities for the operations distinctive of that species. In modern terms, "nature" is genotype, and "natural capacity" is the power of a species' genetic programme to produce the organs, enzymes, triggers, and instincts involved in the operations distinctive of that species. This is precisely the sense in which the "capacity" for reason and choice is a species-wide characteristic of *homo sapiens*.<sup>6</sup>

From there, your conclusion is simple: since you have already established on other grounds that the early embryo is an individual of the species *homo sapiens*, you are able to conclude that the early embryo has the capacity for reason and choice in the sense of 'capacity' appropriate for the ascription of personhood.

You do not say so, but your conclusion is fully in line with the philosophical history of the word 'person'. The Greek and Latin words ancestral to ours were honorifics drawn from the law (Latin) or from the theater (Greek). They acquired a use in Trinitarian theology as early as Tertullian (late 2nd century) and acquired a philosophical use in the 6th century, thanks to spin-offs of the earlier Nestorian and Monophysite disputes. The philosophical use was established by Boethius, whose definition so dominated Latin usage (and Greek) that it has come over as standard into all the modern European languages. What was Boethius's definition? "A person is an individual substance of a rational nature."<sup>7</sup> Note well: it says "of a rational nature," not "engaged in a rational exercise," nor "top-heavy with cortex."

<sup>6</sup> A great deal of pro-abortion argumentation is outdated in this regard. It is pre-genetic. Rather than take "nature" consistently as genotype, abortionists like to stick with phenotype. If the fetus doesn't *look* very human yet, they like to dismiss it as a "blob"; and if brain tissue is not to be *seen* yet, they like to deny any "capacity" for reason. In both cases, they treat lack of "formation" on the tissue level as though it meant lack of "formation" on the DNA level. Aristotle had an excuse for not knowing the difference. We do not.

<sup>7</sup> See Boethius, *Liber de duabus naturis*, chapter 3.

Thus the overall logic of your position is clear enough: being a living organism with such-and-such genes, different from the genes of either parent or gamete, is a necessary and sufficient condition for being an individual of the species *homo sapiens*; being an individual of this species is a sufficient condition for having the genotypal capacity for reason and choice; having this genotypal capacity is a sufficient condition for being a person. By transitivity of 'sufficient condition', being a living organism with such-and-such genes, etc., is a sufficient condition for being a person. In fact, the human fertilizatum is already a living organism with such-and-such genes, etc. Therefore, by *modus ponens*, the fertilizatum is already a person.<sup>a</sup>

Is there circularity? Of course not. Nowhere does the claim that a potential for reason and choice exists in the early embryo appear in text pertinent to the H-question. No such potential is appealed to as grounds for affirming the human status of the embryo (from which the person-status is a mediate conclusion). Hence there is no circularity. Mr. Buckley's perception of (a threat of) circularity is an optical illusion, caused by his own failure to distinguish the H-question from the P-question.

If I may be of service to you in a further capacity, do not hesitate to consider me

Your willing servant,



W. H. Marshner

Christendom College

cc: John Walker

William F. Buckley, Jr.

<sup>a</sup> Logical traditionalists will prefer to look at the argument as a sorites, reducible to a series of syllogisms in *Barbara*.